

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:8:LN:2:GL-114317-01

WBDouglass

date:

to: Area 14 Appeals Office, Laguna Niguel  
Attention: Ms. Janet Spaulding, Appeals Officer

from: WILLIS B. DOUGLASS  
Attorney (SBSE)

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subject: **Advisory Opinion on Validity of Request for CDP Hearing**  
**Taxpayers:** [REDACTED], TIN [REDACTED]

This memorandum responds to your request for assistance dated March 12, 2001. This memorandum should not be cited as precedent.

**ISSUES**

Was the taxpayers' withdrawal of their request for a Collection Due Process (CDP) hearing in this case valid, such that the taxpayers have now lost their right to a full CDP hearing and retain only the right to an equivalent hearing?

**CONCLUSIONS**

The taxpayers' actual intent was not to withdraw their request for a CDP hearing. Therefore, we conclude that Appeals should proceed with a full CDP hearing in this case. The taxpayers should not be restricted to an equivalent hearing.

**FACTS**

This case involves individual income taxes owed by [REDACTED] for [REDACTED], [REDACTED] and [REDACTED], and the joint income tax liabilities of [REDACTED] and [REDACTED], the taxpayers, for [REDACTED], [REDACTED] and [REDACTED].

In [REDACTED], the taxpayers submitted an offer in compromise ("OIC") for the above liabilities. The OIC was assigned to a revenue officer. The offer was deemed unprocessable because the taxpayers had not filed their [REDACTED] and [REDACTED] tax returns. On [REDACTED], the revenue officer prepared and executed a notice of federal tax lien ("NFTL") for the [REDACTED] through [REDACTED] liabilities. On [REDACTED], this NFTL was recorded in Orange County, California. On [REDACTED], the revenue officer prepared and executed an NFTL for the [REDACTED] through [REDACTED] liabilities. This NFTL

was recorded in Orange County on [REDACTED]. On [REDACTED], the revenue officer determined that the taxpayers were in sufficient compliance with the tax laws to allow the OIC to be deemed processable. However, the IRS did not immediately accept the OIC. The revenue officer performed certain financial analyses, but no decision was made on whether to accept or reject the OIC.

On [REDACTED], the IRS received two requests for collection due process ("CDP") hearings under I.R.C. § 6320 on the two NFTL filings. Both of these CDP requests were dated [REDACTED], and both were postmarked [REDACTED]. You have determined that both requests were timely under I.R.C. § 6320(a)(3)(B) and (b)(1). There is nothing in the file which indicates that this determination is incorrect.

In [REDACTED], the Area 14 Collection CDP Coordinator ("the Coordinator") advised the revenue officer that she should ask the taxpayers to withdraw their CDP requests. The Coordinator appears to have reasoned that the CDP requests were unnecessary, since Area 14 Compliance was considering the OIC. The revenue officer discussed the proposed withdrawal with the taxpayers, and she sent a Form 12256, *Withdrawal of Request for Collection Due Process Hearing*, to the taxpayers. On [REDACTED], the taxpayers signed and returned the Form 12256 with a letter attached. The relevant part of the text of the letter is as follows:

Dear [revenue officer]

I have enclosed the form that you want signed. Respectfully, we feel that we are signing this form under duress.

In good faith we have offered the IRS an offer in compromise, yet the IRS still puts a tax lien on us. This lien made it impossible for us to finance a new home. The government says that their goal is for the citizens of the US to own their own homes. We gave up that dream, for now, but when our landlord recently gave us a 30 day notice so he could sell his property (the same one we could not buy), we had a difficult time finding a new rental place, again because of this tax lien. If we were not making every attempt to pay our debt to the IRS, if we had been ignoring correspondence, etc. then we would understand the IRS's decision to place the lien, but that is not the case. We have done everything you have asked,

we are, in good faith, and with positive intent, trying to pay our debts. however, with the move, and with the stress surrounding the move, I do not have the energy to fight it, and so I acquiesce, and we have signed the form, but we do so under duress.

Based on this letter, the Coordinator determined that the withdrawal of the CDP request was invalid. Therefore, Area 14 Compliance forwarded the case and its files to Appeals for a CDP hearing. You have requested our opinion as to whether the case is properly before Appeals for a CDP hearing or an equivalent hearing, or whether the case should be returned to Area 14 Compliance.

#### **ANALYSIS**

If a taxpayer fails or refuses to pay a tax liability after notice and demand for payment, a lien arises in favor of the United States on all of the taxpayer's property and rights to property. I.R.C. § 6321. The lien of I.R.C. § 6321 is not valid as against purchasers, holders of a security interest, mechanic's lienors, or judgment lien creditors until an NFTL is filed. I.R.C. § 6323(a).

Effective for NFTLs filed on or after January 19, 1999, the IRS is required to provide a taxpayer with the opportunity to administratively appeal the filing of the NFTL by filing a formal request for a CDP hearing with the IRS Office of Appeals. I.R.C. § 6320. The IRS must notify a taxpayer within five business days after the NFTL is filed that the taxpayer may request a CDP hearing. The taxpayer has thirty days after the end of the five-day period in which to submit a request for a CDP hearing. I.R.C. § 6320(a)(3)(B). The request must be in writing and must include the reason or reasons why the taxpayer disagrees with the filing of the NFTL. Temp. Treas. Reg. § 301.6320-1T(c), Q&A-C2.

In general, the taxpayer may raise any relevant issue related to the unpaid tax at the CDP hearing. The taxpayer may assert innocent spouse status, challenge the appropriateness of the lien, request collection alternatives, such as an installment agreement or offer in compromise, and suggest which assets should be used to satisfy the tax liability. I.R.C. §§ 6320(c) and 6330(c)(2)(A). The existence or amount of the tax liability, however, may only be challenged if the taxpayer did not receive a timely statutory notice of deficiency or otherwise have the opportunity to dispute the tax liability. I.R.C. §§ 6320(c) and 6330(c)(2)(B).

A taxpayer may attempt to resolve concerns regarding the filing of an NFTL before or after requesting a CDP hearing. If the situation is resolved after filing a request for a CDP hearing, the

taxpayer may withdraw the request for the hearing in writing. The thirty-day period in which a taxpayer may file a request for a CDP hearing is not suspended or extended while a taxpayer is engaged in an informal attempt to settle the dispute. Temp. Treas. Reg. § 301.6320-1T(c), Q&A-C9.

The determination by Appeals in a CDP hearing is subject to judicial review if the taxpayer files a timely appeal. I.R.C. §§ 6320(c) and 6330(d). However, if the taxpayer does not timely file a CDP request, the taxpayer will not be entitled to a CDP hearing, and therefore the taxpayer will lose the right of judicial review. However, the taxpayer may be entitled to an equivalent hearing, which is similar to a CDP hearing without being subject to judicial review. Temp. Treas. Reg. § 301.6320-1T(c), Q&A C7.

From the above discussion, it will be seen that a taxpayer who withdraws his request for a CDP hearing before his case is resolved has given up his right to judicial review of whatever decision the IRS may finally make. Therefore, we believe that a withdrawal of a CDP request must be entirely voluntary and unambiguous to be valid. In the present case, the taxpayers appear to have believed that they were being pressured to withdraw their CDP requests before any decision was made at any level on their OIC. The taxpayers filed the Form 12256, but they also included a letter which indicated that they actually did not want to withdraw their requests for CDP hearings. Therefore, we agree with the Coordinator that the withdrawal should not be considered as valid, and that the taxpayers should be afforded a full CDP hearing on both NFTLs with a right of judicial review.

Since nothing further remains to be done on this case, we are closing our file. If you have any questions, please contact the undersigned at (949) 360-2691.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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WILLIS B. DOUGLASS  
Attorney (SBSE)

cc: James A. Nelson, Area Counsel SB/SE